



Reprinted
February 14, 2003

HOUSE BILL No. 1479

DIGEST OF HB 1479 (Updated February 13, 2003 2:37 PM - DI 106)

Citations Affected: IC 34-51.

Synopsis: Comparative fault. Allows a jury to be informed that a person who may be at fault is immune from liability. Repeals a provision that establishes 90 day time limit for filing a nonparty defense in a malpractice case when a claim against a qualified health provider is filed with the insurance commissioner.

Effective: July 1, 2003.

Kersey, Young D

January 15, 2003, read first time and referred to Committee on Insurance, Corporations and Small Business.

February 10, 2003, amended, reported — Do Pass.

February 13, 2003, read second time, amended, ordered engrossed.

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HB 1479—LS 7474/DI 106+



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February 14, 2003

First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

HOUSE BILL No. 1479

A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 34-51-2-7 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 7. (a) This section
3 applies to an action based on fault that is:
4 (1) brought against one (1) defendant or two (2) or more
5 defendants who may be treated as a single party; and
6 (2) tried to a jury.
7 (b) The court, unless all the parties agree otherwise, shall instruct
8 the jury to determine its verdict in the following manner:
9 (1) The jury shall determine the percentage of fault of the
10 claimant, of the defendant, and of any person who is a nonparty.
11 The jury may ~~not~~ be informed of any immunity defense that is
12 available to a nonparty. In assessing percentage of fault, the jury
13 shall consider the fault of all persons who caused or contributed
14 to cause the alleged injury, death, or damage to property, tangible
15 or intangible, regardless of whether the person was or could have
16 been named as a party. The percentage of fault of parties to the
17 action may total less than one hundred percent (100%) if the jury

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1 finds that fault contributing to cause the claimant's loss has also
2 come from a nonparty or nonparties.

3 (2) If the percentage of fault of the claimant is greater than fifty
4 percent (50%) of the total fault involved in the incident which
5 caused the claimant's death, injury, or property damage, the jury
6 shall return a verdict for the defendant and no further deliberation
7 of the jury is required.

8 (3) If the percentage of fault of the claimant is not greater than
9 fifty percent (50%) of the total fault, the jury then shall determine
10 the total amount of damages the claimant would be entitled to
11 recover if contributory fault were disregarded.

12 (4) The jury next shall multiply the percentage of fault of the
13 defendant by the amount of damages determined under
14 subdivision (3) and shall then enter a verdict for the claimant in
15 the amount of the product of that multiplication.

16 SECTION 2. IC 34-51-2-8 IS AMENDED TO READ AS
17 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 8. (a) This section
18 applies to an action based on fault that:

19 (1) is brought against two (2) or more defendants; and

20 (2) is tried to a jury.

21 (b) The court, unless all the parties agree otherwise, shall instruct
22 the jury to determine its verdict in the following manner:

23 (1) The jury shall determine the percentage of fault of the
24 claimant, of the defendants, and of any person who is a nonparty.
25 The jury may ~~not~~ be informed of any immunity defense that might
26 be available to a nonparty. In assessing percentage of fault, the
27 jury shall consider the fault of all persons who caused or
28 contributed to cause the alleged injury, death, or damage to
29 property, tangible or intangible, regardless of whether the person
30 was or could have been named as a party. The percentage of fault
31 of parties to the action may total less than one hundred percent
32 (100%) if the jury finds that fault contributing to cause the
33 claimant's loss has also come from a nonparty or nonparties.

34 (2) If the percentage of fault of the claimant is greater than fifty
35 percent (50%) of the total fault involved in the incident which
36 caused the claimant's death, injury, or property damage, the jury
37 shall return a verdict for the defendants and no further
38 deliberation of the jury is required.

39 (3) If the percentage of fault of the claimant is not greater than
40 fifty percent (50%) of the total fault, the jury shall then determine
41 the total amount of damages the claimant would be entitled to
42 recover if contributory fault were disregarded.

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1 (4) The jury next shall multiply the percentage of fault of each
2 defendant by the amount of damages determined under
3 subdivision (3) and shall enter a verdict against each defendant
4 (and such other defendants as are liable with the defendant by
5 reason of their relationship to a defendant) in the amount of the
6 product of the multiplication of each defendant's percentage of
7 fault times the amount of damages as determined under
8 subdivision (3).
9 SECTION 3. IC 34-51-2-17 IS REPEALED [EFFECTIVE JULY 1,
10 2003].

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Insurance, Corporations and Small Business, to which was referred House Bill 1479, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 34-6-2-88 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 88. "Nonparty", for purposes of IC 34-51-2, means a person who ~~caused or contributed to cause the alleged injury, death, or damage to property is or may be liable to the claimant in part or in whole for damages claimed~~ but who has not been joined in the action as a defendant. **The term does not include an employer of the claimant.**

SECTION 2. IC 34-51-2-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 7. (a) This section applies to an action based on fault that is:

- (1) brought against one (1) defendant or two (2) or more defendants who may be treated as a single party; and
- (2) tried to a jury.

(b) The court, unless all the parties agree otherwise, shall instruct the jury to determine its verdict in the following manner:

- (1) The jury shall determine the percentage of fault of the claimant, of the defendant, and of any person who is a nonparty. ~~The jury may not be informed of any immunity defense that is available to a nonparty. In assessing percentage of fault, the jury shall consider the fault of all persons who caused or contributed to cause the alleged injury, death, or damage to property, tangible or intangible, regardless of whether the person was or could have been named as a party.~~ The percentage of fault of parties to the action may total less than one hundred percent (100%) if the jury finds that fault contributing to cause the claimant's loss has also come from a nonparty or nonparties.
- (2) If the percentage of fault of the claimant is greater than fifty percent (50%) of the total fault involved in the incident which caused the claimant's death, injury, or property damage, the jury shall return a verdict for the defendant and no further deliberation of the jury is required.
- (3) If the percentage of fault of the claimant is not greater than



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fifty percent (50%) of the total fault, the jury then shall determine the total amount of damages the claimant would be entitled to recover if contributory fault were disregarded.

(4) The jury next shall multiply the percentage of fault of the defendant by the amount of damages determined under subdivision (3) and shall then enter a verdict for the claimant in the amount of the product of that multiplication.

SECTION 3. IC 34-51-2-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 8. (a) This section applies to an action based on fault that:

- (1) is brought against two (2) or more defendants; and
- (2) is tried to a jury.

(b) The court, unless all the parties agree otherwise, shall instruct the jury to determine its verdict in the following manner:

(1) The jury shall determine the percentage of fault of the claimant, of the defendants, and of any person who is a nonparty. ~~The jury may not be informed of any immunity defense that might be available to a nonparty. In assessing percentage of fault, the jury shall consider the fault of all persons who caused or contributed to cause the alleged injury, death, or damage to property, tangible or intangible, regardless of whether the person was or could have been named as a party.~~ The percentage of fault of parties to the action may total less than one hundred percent (100%) if the jury finds that fault contributing to cause the claimant's loss has also come from a nonparty or nonparties.

(2) If the percentage of fault of the claimant is greater than fifty percent (50%) of the total fault involved in the incident which caused the claimant's death, injury, or property damage, the jury shall return a verdict for the defendants and no further deliberation of the jury is required.

(3) If the percentage of fault of the claimant is not greater than fifty percent (50%) of the total fault, the jury shall then determine the total amount of damages the claimant would be entitled to recover if contributory fault were disregarded.

(4) The jury next shall multiply the percentage of fault of each defendant by the amount of damages determined under subdivision (3) and shall enter a verdict against each defendant (and such other defendants as are liable with the defendant by reason of their relationship to a defendant) in the amount of the product of the multiplication of each defendant's percentage of fault times the amount of damages as determined under subdivision (3)."

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Renumber all SECTIONS consecutively.
and when so amended that said bill do pass.

(Reference is to HB 1479 as introduced.)

FRY, Chair

Committee Vote: yeas 7, nays 5.

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1479 be amended to read as follows:

Page 1, delete lines 1 through 7.

Page 2, line 1, reset in roman "The jury may".

Page 2, line 1, reset in roman "be informed of any immunity defense that is".

Page 2, reset in roman lines 2 through 5.

Page 2, line 6, reset in roman "been named as a party".

Page 2, line 32, reset in roman "The jury may".

Page 2, line 32, reset in roman "be informed of any immunity defense that might".

Page 2, reset in roman lines 33 through 36.

Page 2, line 37, reset in roman "was or could have been named as a party".

Renumber all SECTIONS consecutively.

(Reference is to HB 1479 as printed February 11, 2003.)

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